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Date of Decision: 15th September 1995

SPECIAL CIVIL APPLICATION NO. 5716 of 1995

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri Saurin A. Shah, Advocate, for the Petitioner

Shri D.C. Dave, Asst. Govt. Pleader, for Respondents Nos. 1,2 and 3

Shri B.B. Naik, Standing Counsel for the Central Government, for Respondent No.4

CORAM: A.N. DIVECHA, J.
(Date: 15th September 1995)

ORAL JUDGMENT

The order of detention passed by the District Magistrate of Bhavnagar (respondent No.3 herein) on 27th May 1995 under sec. 3 of the Prevention of Blackmarketing and Maintenance of

Supplies of Essential Commodities Act, 1980 ('the Act' for brief) is under challenge in this petition under Art. 226 of the Constitution of India at the instance of the detenu himself.

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that respondent No.3, with a view to preventing the petitioner from carrying on his nefarious activities within the purview of the Act, passed the impugned order of detention under sec. 3 thereof on 27th May 1995. He was required to be detained and kept in the Central Jail at Vadodara. Soon thereafter he was apprehended and sent to the central jail at Vadodara. He was supplied with the grounds of detention soon thereafter. It appears that the petitioner's representations against his detention were turned down and the Advisory Board also opined in favour of his continued detention. Thereupon the State Government confirmed his detention. The petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning the legality and validity of his detention under the Act.

3. Several submissions have been urged in support of this petition. It is not necessary to deal with all of them as this petition can be disposed of on one short ground based on non-supply of bills referred to in the grounds of detention.

4. In this connection a reference deserves to be made to the Division Bench ruling of this court in the case of Budhabhai Somabhai Parmar v. District Magistrate, Kheda and Others reported in 30(1) 1989(1) G.L.R. 325. In that case, non-supply of bills constituting basic facts and referred to in the grounds of detention was considered to be fatal to continued detention of the detenu on the reasoning that such non-supply has denied to the detenu an opportunity of making effective representation against his detention. Sitting as a single Judge, the aforesaid Division Bench ruling of this court is binding to me. Even otherwise, I am in respectful agreement therewith. It is on all fours applicable in the present case. The bills referred to in the grounds of detention are admittedly not supplied to the petitioner despite his demand for them in his representations. Such non-supply has vitiated the continued detention of the petitioner as he was deprived of and denied an opportunity of making an effective representation against his detention.

5. In the result, this petition is accepted. The petitioner is ordered to be released from detention forthwith if no longer required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.
